

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Petition for Waiver of the Commission's)	WC Docket No. 07-31
Price Cap Rules for Services Transferred)	
from VADI to the Verizon Telephone)	
Companies)	

ORDER

Adopted: June 6, 2007

Released: June 6, 2007

By the Chief, Pricing Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. On February 9, 2007, the Verizon telephone companies (Verizon)¹ filed a petition requesting an extension of a previously granted waiver of section 61.42(g) of the Commission's rules² to exclude advanced services offered under Tariff FCC No. 20 from price caps.³ These services include those that were transferred to Verizon from its former separate advanced services affiliate, Verizon Advanced Data Inc. (VADI).⁴ As explained below, due to unique circumstances, we extend Verizon's limited waiver of section 61.42(g) for purposes of the 2007 annual access tariff filing.⁵

II. BACKGROUND

2. As a condition of the merger between GTE Corporation and Bell Atlantic Corporation, the Commission ordered the merged company to offer advanced services through a separate advanced services affiliate until such time as provided for in the sunset provisions of the merger order.⁶ On May 1, 2001, Verizon sought permission to expedite the sunset of these requirements.⁷ On September 26, 2001,

¹ Verizon telephone companies are the affiliated local telephone companies of Verizon Communications Corp.

² 47 C.F.R. § 61.42(g).

³ Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies (filed Feb. 9, 2007) (Petition).

⁴ *Id.* at 2. In addition to the former VADI services, Verizon includes all new advanced services in Tariff FCC No. 20; *see also* Tariff FCC No. 20, Section 5, Parts I-IV.

⁵ *See* 47 C.F.R. § 61.43 (annual price cap filing requirements).

⁶ *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14038-39, para. 5; 14258, App. D (2000) (*Bell Atlantic-GTE Merger Order*). The Bell Atlantic-GTE merger, which was completed on June 30, 2000, created Verizon Communications.

⁷ Letter from Gordon R. Evans, Vice President, Federal Regulatory, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, CC Docket No. 98-184 (filed May 1, 2001).

the Common Carrier Bureau granted Verizon's request, explaining that re-integration of these assets from VADI into Verizon on an accelerated basis was in the public interest.⁸ A then recent court ruling would, in any event, have caused the separate affiliate condition to terminate automatically in January 2002.⁹

3. On November 30, 2001, Verizon filed a petition for an interim waiver of sections 61.42(g), 61.38, and 61.49 of the Commission's rules with respect to the assets transferred from VADI to Verizon.¹⁰ Section 61.42(g) provides that new services must be included in the first annual price cap tariff filing following completion of the base period in which they are introduced.¹¹ The Bureau granted Verizon a limited waiver of section 61.42(g) for purposes of its 2002 annual access charge filing.¹² Since then, this waiver has been extended on an annual basis to allow Verizon to exclude its advanced services in Tariff FCC No. 20 from price cap indexes for purposes of access filings.¹³

4. This year, Verizon filed a petition seeking a waiver of section 61.42(g) of the Commission's rules to continue to exclude its advanced services from price cap indexes for 2007 as well as future years.¹⁴ Specifically, Verizon requests that it be granted a waiver that will apply to future annual

⁸ *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Order, 16 FCC Rcd 16915, 16918, para. 6 (Com. Car. Bur. 2001) (*VADI Accelerated Transfer Order*). The Common Carrier Bureau became the Wireline Competition Bureau (Bureau) in 2002 as part of organizational changes at the Commission. See generally *Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau*, Order, 17 FCC Rcd 4672 (2002).

⁹ The separate affiliate condition automatically terminated nine months after the date of a final and non-appealable judicial decision determining that the separate advanced services affiliate is a "successor or assign" of the incumbent. *Bell Atlantic-GTE Merger Order*, 15 FCC Rcd at 14288-89, App. D, para. 11.c. Under the court's ruling in *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001), VADI was determined to be a successor or assign of Verizon. *VADI Accelerated Transfer Order*, 16 FCC Rcd at 16916, para. 2 n.5.

¹⁰ Verizon Petition for Waiver of the Price Cap Rules, WCB/Pricing File No. 02-16 (filed Nov. 30, 2001); see also *Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, WCB/Pricing File No. 04-16, Order, 19 FCC Rcd 7095, 7096, para. 3 (Wireline Comp. Bur. 2004) (*2004 Waiver Order*).

¹¹ 47 C.F.R. § 61.42(g).

¹² *Verizon Petition for Interim Waiver of Sections 61.42(g), 61.38 and 61.49 of the Commission's Rules*, WCB/Pricing No. 02-16, Order, 17 FCC Rcd 11010 (Wireline Comp. Bur. 2002) (*2002 Waiver Order*). Consideration of the remainder of Verizon's waiver request was deferred until a later date. *Id.* at 11010, para. 1.

¹³ *Verizon Petition for Interim Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing No. 03-11, Order, 18 FCC Rcd 6498 (Wireline Comp. Bur. 2003) (*2003 Waiver Order*); *2004 Waiver Order*, 19 FCC Rcd 7095; *Verizon Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, WCB/Pricing No. 05-17, Order, 20 FCC Rcd 8900 (Wireline Comp. Bur. 2005) (*2005 Waiver Order*); *Verizon Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, WCB/Pricing No. 06-10, Order, 21 FCC Rcd 6470 (Wireline Comp. Bur. 2006), application for review pending (*2006 Waiver Order*).

¹⁴ Petition at 1. Verizon clarified information related to its petition in an additional filing on March 8, 2007. See Letter from Donna Epps, Vice President Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-31 (filed Mar. 8, 2007) (Verizon Mar. 8, 2007 *Ex Parte* Letter). Verizon further identified the services subject to its Petition with speeds below 200 kilobits per second, and noted rate elements that were inadvertently listed twice on Exhibit 1 of its Petition.

access filings for those Tariff FCC No. 20 services that it describes as “VADI broadband services” having speeds of 200 kbps or greater.¹⁵ At the same time, Verizon seeks a waiver for its other Tariff FCC No. 20 advanced services, which it describes as having speeds below 200 kbps, until the Commission resolves pending issues regarding the appropriate regulatory treatment of these services.¹⁶ The Pricing Policy Division issued a public notice on February 21, 2007, seeking comment on Verizon’s petition.¹⁷ The New Jersey Division of Rate Counsel (NJRC) submitted comments opposing Verizon’s request for a waiver.¹⁸

III. DISCUSSION

5. The Commission may waive its regulations for good cause shown.¹⁹ For the reasons discussed below, we find that Verizon faces special circumstances with respect to its advanced services in Tariff FCC No. 20 that warrant a waiver of the Commission’s rules, and that such a waiver will serve the public interest.²⁰ Accordingly, we find that good cause exists to grant Verizon an extension of the waiver of section 61.42(g) for these services limited, however, to the 2007 annual access tariff filing.

A. Recent Regulatory Developments

6. On August 5, 2005, the Commission adopted the *Wireline Broadband Internet Access Services Order*, which, among other regulatory relief, allows facilities-based wireline broadband Internet access providers to offer the telecommunications transmission component of their wireline broadband Internet access services on a common-carrier basis or a non-common carrier basis.²¹ That order also allows those wireline broadband Internet access service providers that choose to offer that transmission component as a telecommunications service to do so on a permissive detariffing basis.²² On December 20, 2004, Verizon filed a petition requesting that the Commission forbear from applying Title II of the Communications Act of 1934, as amended, and the Commission’s *Computer Inquiry* rules to Verizon’s broadband services.²³ Pursuant to section 10(c) of that Act, the relief requested by Verizon was deemed

¹⁵ Petition at 2, 12.

¹⁶ *Id.* See also Verizon Mar. 8, 2007 *Ex Parte* Letter at 1.

¹⁷ *Comments Sought on Verizon Petition for Waiver of the Commission’s Price Cap Rules*, WC Docket No. 07-31, Public Notice, 22 FCC Rcd 3755 (Wireline Comp. Bur. 2007).

¹⁸ Comments of the New Jersey Division of Rate Counsel (filed Mar. 13, 2007) (NJRC Comments).

¹⁹ 47 C.F.R. § 1.3.

²⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)) (explaining the necessary criteria to establish good cause for a waiver).

²¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14899-903, paras. 86-95 (2005) (*Wireline Broadband Internet Access Services Order*), petitions for review pending, *Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. filed Oct. 26, 2005).

²² *Id.* at 14900-03, paras. 89-95.

²³ *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440 (deemed granted by operation of law, effective March 19, 2006) (*Verizon Forbearance Petition*). See also Letter from Edward Shakin, Vice President and Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-440 (filed Feb. 7, 2006); Letter from Susanne A. Guyer, Senior Vice President-Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-440 (filed Feb. 17, 2006).

granted by operation of law, effective March 19, 2006.²⁴

7. Last year, the Bureau granted Verizon a waiver for those Tariff FCC No. 20 services governed by the *Wireline Broadband Internet Access Services Order* and the *Verizon Forbearance Petition*.²⁵ In its request for that waiver, Verizon explained that as a result of regulatory changes resulting from those decisions, it may be unnecessary to offer most Tariff FCC No. 20 services under tariff or price cap regulation on a going forward basis.²⁶ Thus, in 2006, the Bureau granted Verizon a waiver of the requirement that it move those services into price caps with the expectation that Verizon needed a waiver for only a short period until it completed its transition plans.²⁷ Verizon asserts that it is proceeding with the transition to deliver these broadband services on a non-common carrier basis.²⁸ It requests “a waiver until such time as the services are detariffed and offered only under private carriage arrangements.”²⁹

8. As part of this transition process, Verizon states that all new broadband services that Verizon introduces will be sold only on a private carriage basis.³⁰ Verizon explains that it is in the process of detariffing “services currently sold under tariff as tariffed arrangements expire and/or customers enter private carriage service contracts.”³¹ Verizon further states that “by the time of the 2007 annual access tariff filing, Verizon intends to handle all new orders for all VADI broadband services on a private carriage basis.”³² According to Verizon, it “intends to continue this transition process until all broadband services are sold exclusively on a private carriage basis.”³³

9. As a threshold matter, we do not address in this order the extent to which Verizon may offer any advanced services on a non-tariffed basis or outside the Commission’s price cap rules as a consequence of the grant of forbearance through operation of law. For purposes of addressing Verizon’s waiver request, however, we will assume without deciding that a waiver is required to enable Verizon to exclude services offered through Tariff FCC No. 20 from price caps.

10. In its petition, Verizon explains that it is continuing to work closely with customers and that the transition to offering most of the Tariff FCC No. 20 services on a non-common carrier basis “is well underway.”³⁴ Verizon states that it is moving ahead “as quickly as possible, and is also considering

²⁴ 47 U.S.C. § 160(c); *Verizon Telephone Companies’ Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law*, Press Release, Federal Communications Commission, Westlaw 707632 (issued March 20, 2006) (“This is to inform the public that, pursuant to section 10(c), the relief requested in Verizon’s petition was deemed granted by operation of law, effective March 19, 2006”) (*Verizon Press Release Granting Forbearance*).

²⁵ *2006 Waiver Order*, 21 FCC Rcd at 6473, para. 9.

²⁶ *Id.*

²⁷ *Id.* (stating “[t]hese special circumstances warrant waiving the requirement that Verizon move these services into price caps for a short period of time”).

²⁸ Petition at 6-7.

²⁹ *Id.* at 2.

³⁰ *Id.* at 7.

³¹ *Id.*

³² *Id.* at 7-8.

³³ *Id.* at 8.

³⁴ Petition at 8; Reply in Support of Verizon’s VADI Waiver Petition at 2 (filed Mar. 23, 2007) (Verizon Reply).

other ways to speed along the transition to private carriage.”³⁵ We believe that these circumstances warrant the grant of a waiver to allow Verizon additional time to complete the transition process and is consistent with our previous finding that contemplates this process should be completed expeditiously. Accordingly, to the extent that Tariff FCC No. 20 services are subject to Verizon’s transition to non-common carrier offerings, we find it is in the public interest to grant Verizon a waiver to exclude these services from price caps so it may complete operational changes that affect the future provisioning of these services to its customers.

B. Pending Proceedings

11. Verizon also seeks a waiver for its remaining services in Tariff FCC No. 20 that Verizon asserts are not affected by the regulatory developments discussed above.³⁶ Verizon asserts that it should be allowed to continue to exclude these services from price caps because the Commission is still considering their appropriate regulatory treatment in pending proceedings.³⁷ Specifically, Verizon requests a waiver “until such time as their final regulatory status is settled” by the Commission.³⁸ The NJRC, arguing that Verizon’s request for a waiver should be denied, asserts that a waiver is not warranted simply on the premise that a proceeding to determine regulatory treatment remains pending before the Commission.³⁹

12. The Bureau originally based its grant of a waiver to Verizon on two primary factors: (1) there were open questions about the regulatory treatment of advanced services in Tariff FCC No. 20, which when decided, might “obviate the need to include advanced services within the price cap indexes;” and (2) the burden associated with being required to incorporate all of these services into price cap indexes.⁴⁰ Verizon acknowledges that the appropriate regulatory status of most of these services is now settled.⁴¹ As Verizon explains, the Commission recently provided regulatory relief for most of the Tariff FCC No. 20 services, and these services will no longer be subject to price cap requirements.⁴² Thus, according to Verizon, only a “handful” of services are left in Tariff FCC No. 20 that are potentially

³⁵ Petition at 8. (Verizon asserts that “it will take some time for Verizon to transition all customers and complete this process – particularly in light of the fact that many customers decided to purchase services pursuant to term plans, some of which extend for several years” and that it “is working closely with these customers to reach private carriage agreements as quickly as possible, and is also considering other ways to speed along the transition to private carriage. For example, Verizon may detariff some services but allow term plan customers to continue to buy current services on their current rates, terms and conditions -- albeit outside of tariff – until the conclusion of their term plan commitment”). The waiver we grant should provide sufficient time for Verizon to implement its plans.

³⁶ Petition at 2, 10-11.

³⁷ *Id.* at 10 (citing *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001)).

³⁸ *Id.* at 10-11.

³⁹ NJRC Comments at 3. The NJRC also asserts that pending proceedings are no justification for treating Verizon differently from other price cap carriers. NJRC Comments at 3-4. The NJRC’s arguments fail to take into account that, because of the events surrounding the Bell Atlantic/GTE merger, Verizon is not similarly situated to other carriers. *See supra* para. 2.

⁴⁰ *2002 Waiver Order*, 17 FCC Rcd at 11012-13, para. 9.

⁴¹ Petition at 4.

⁴² *See id.* at 4-5 (citing *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14865, para. 17; *Verizon Press Release Granting Forbearance*).

subject to price cap treatment.⁴³ As a result, it appears that the burden to reincorporate these few remaining services into price caps is no longer significant, and due to the changes in Verizon's circumstances, a waiver is no longer necessary. Given the immediacy of the approaching annual access filing deadline, however, we believe a waiver is warranted to maintain the status quo for an additional year. Thus, we waive our rules to the extent necessary to allow Verizon to exclude these services from price caps for purposes of the 2007 annual access filing.⁴⁴

13. The NJRC asserts that because its application for review challenging the Bureau's decision last year to grant Verizon a waiver is pending before the Commission, the Commission and not the Bureau must decide Verizon's waiver petition this year.⁴⁵ Further, it contends that the resolution of Verizon's waiver request "requires a rulemaking and may not be done through a waiver."⁴⁶ The NJRC offers no support for either assertion. To the contrary, the Commission's rules specifically delegate authority to the Bureau to address waiver requests, and thus permit the Bureau to act on Verizon's petition for a waiver as the Bureau has done in the past.⁴⁷ The Bureau is not relieved from this responsibility simply because the NJRC's application for review is pending before the Commission. We also disagree with the NJRC's contention that a rulemaking proceeding is required in order to accord Verizon the opportunity for the relief it seeks. The question here does not require the Commission to establish policies or rules for similarly situated carriers in the industry to follow in the future. Rather, the relief that the Bureau grants to Verizon is temporary and is based on discrete facts and unique circumstances that affect only Verizon.⁴⁸ Further, the underlying issue – the appropriate regulatory treatment of advanced services -- is already the subject of a pending rulemaking, and in the interim, regulations may be fine tuned through the waiver process. We, therefore, find no merit in the NJRC's arguments.

14. Finally, the NJRC renews its assertions that numerous other events and changes in the telecommunications marketplace constitute public policy reasons against allowing Verizon to continue to

⁴³ Petition at 10.

⁴⁴ From Verizon's assertions in its Petition, we believe that by the 2008 annual access filing, Verizon should have had sufficient time to transition impacted broadband services to private carriage arrangements, and that an additional waiver for those services should not be necessary. For the remaining services in Tariff 20, we would expect that an additional year would be sufficient time to transition those services to price cap regulation. We note that this is the sixth consecutive year that Verizon has been granted a temporary waiver of section 61.42(g). Should Verizon request a similar waiver for its 2008 annual access filing, we would expect it to explain with additional particularity why it has not had sufficient time to complete these transitions in order to render a further waiver unnecessary.

⁴⁵ NJRC Comments at 3-4. The NJRC incorporates by reference the arguments raised in its application for review. See Verizon Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies, WCB/Pricing File No. 06-10, Application for Review Filed by the New Jersey Division of the Ratepayer Advocate (filed July 7, 2006). Verizon notes that it incorporates by reference its responses to those arguments. Verizon Reply at 2 n.3. The NJRC's application is now before the Commission, and is not addressed in this order.

⁴⁶ NJRC Comments at 3-4.

⁴⁷ 47 C.F.R. § 0.91(b) (authorizing the Bureau to "[a]ct on requests for interpretation or waiver of rules").

⁴⁸ It is a well-established principle that administrative agencies have discretion to proceed by either adjudication or rulemaking. See *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947). As the courts have held, "waiver processes are a permissible device for fine tuning regulations." See *National Rural Telecom Ass'n v. FCC*, 988 F.2d 174, 181 (D.C. Cir. 1993) (citing *Telocator Network of America v. FCC*, 691 F.2d 525, 550 n.191 (D.C. Cir. 1982)).

exclude the advanced services at issue from price caps.⁴⁹ The Bureau has already addressed and rejected similar arguments, finding that events such as these are unrelated to the relief requested by Verizon and further, that this proceeding is not the appropriate forum in which to address such complex issues.⁵⁰ Accordingly, we grant Verizon an extension of the limited waiver of section 61.42(g) for one additional year to exclude advanced services under Tariff FCC No. 20 from price caps for purposes of the 2007 annual access tariff filing.

IV. ORDERING CLAUSE

15. Accordingly, IT IS ORDERED that, pursuant to sections 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-205, section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, section 61.42(g) of the Commission's rules IS WAIVED for advanced services in Verizon's Tariff FCC No. 20, including those transferred from VADI to Verizon, only with respect to Verizon's 2007 annual access tariff filing requirements under section 61.43 of the Commission's rules, 47 C.F.R. §§ 61.42(g), 61.43.

FEDERAL COMMUNICATIONS COMMISSION

Albert M. Lewis
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Wireline Competition Bureau

⁴⁹ NJRC Comments at 4 (referring to a separations freeze and numerous other changes "such as the granting of Section 271 authority, the classification of digital subscriber line ("DSL") and cable modem as information services, the classification of VoIP as an interstate service, pending proposals to revise intercarrier compensation, and proposed universal service reform").

⁵⁰ *2006 Waiver Order*, 21 FCC Rcd at 6475, para. 13 (noting the ongoing proceeding related to reform of the jurisdictional separations process) (citing *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 (2006)). See also *Verizon's Petition for Waiver of the Commission's Rules to Treat Unrecovered Local Number Portability Costs as Exogenous Costs under Section 61.45(d)*, CC Docket No. 95-116, Order, 21 FCC Rcd 10140, 10145-46, para. 11 (Wireline Comp. Bur. 2006) (similarly rejecting NJRC assertions that allege "numerous other events and changes in the telecommunications marketplace . . . may be categorized as exogenous events"), *application for review and petition for mandamus pending*, 3d Cir. Case No. 07-1343 (filed Feb. 2, 2007).